

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the)	WT Docket No. 03-66
Commission's Rules to Facilitate the Provision of Fixed)	RM-10586
and Mobile Broadband Access, Educational and Other)	
Advanced Services in the 2150-2162 and 2500-2690)	
MHz Bands)	
)	
Part 1 of the Commission's Rules - Further Competitive)	WT Docket No. 03-67
Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable Multipoint)	MM Docket No. 97-217
Distribution Service and the Instructional Television)	
Fixed Service to Engage in Fixed Two-Way)	
Transmissions)	
)	
Amendment of Parts 21 and 74 of the Commission's Rules)	WT Docket No. 02-68
With Regard to Licensing in the Multipoint Distribution)	RM-9718
Service and in the Instructional Television Fixed Service)	
for the Gulf of Mexico)	
)	

To: The Commission

**REPLY COMMENTS OF THE GEORGE MASON UNIVERSITY INSTRUCTIONAL
FOUNDATION
IN PARTIAL SUPPORT OF JOINT COMMENTS AND PETITION FOR
RECONSIDERATION OF CATHOLIC TELEVISION NETWORK AND NATIONAL
ITFS ASSOCIATION**

The George Mason University Instructional Foundation, Inc., (GMUIF) hereby provides these joint Reply Comments in partial support of the positions of the Catholic Television Network ("CTN"), and National ITFS Association ("NIA"), as reflected in their Joint Comments filed January 10, 2005 in response to the *Further Notice of Proposed Rule Making*, and their Petition for Reconsideration also filed January 10, 2005 in response to the *Report and Order*,

both in connection with the referenced proceeding.¹ We agree with much of what is being filed by Todd Gray, Esq., counsel to a large group of EBS licensees -- "The EBS Parties" -- and have, with permission, incorporated in this filing much of the actual language of the EBS Parties' Reply Comments filing. Because we do disagree strongly on a couple of issues, however, we have chosen to file our comments separately from the EBS Parties' filing.

GMUIF has been a heavy user of ITFS (now EBS) stations in the greater metropolitan Washington, D.C. area since 1981. We operate two C Group stations -- WHB 652 in Rosslyn, Virginia and WLX 728 in Shannondale, West Virginia. We also have licenses and operate channels on both the C Group and F Groups on a temporary fixed basis throughout the metropolitan Washington area. GMUIF is also the sole stockholder of F Corporation, a BRS licensee on the F Group in Bethesda, Maryland. All of our stations operate with ITFS eligible and ITFS permissible programming twenty-four hours a day, 7 days a week. Our major interest in this proceeding has been the preservation of our television services and their enhancement going forward with the new band plan and new rules. We have an important interest in the revised band plan, technical rules, service rules and other elements at issue in this proceeding.

GMUIF supports most of CTN and NIA's positions as reflected in their Joint Comments and Petition for Reconsideration.

Transition to New Band Plan

GMUIF urges the FCC to reconsider requiring transitions to take place based on Major Economic Areas (MEAs), and supports the suggestion by CTN, NIA and others that the FCC use

¹ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-135 (rel. July 29, 2004), 19 FCC Rcd 14165 (2004).

much smaller Basic Trading Areas (BTAs) instead. GMUIF also strongly opposes any plan to force EBS licensees operating in markets that have not been transitioned by January 10, 2008 to discontinue operations and surrender their authorizations to an auction process. If the FCC does not abandon this ill-advised concept altogether, and rely on market forces to coordinate the timing of transitions, GMUIF supports the proposal of CTN and NIA for the process that will allow EBS stations to self-transition as an alternative to losing their licenses.

Geographic Area Licensing

GMUIF does not, however support the concern expressed by CTN and NIA that by allowing both two-way and one-way operations to co-exist in the entire 2.5 GHz band prior to transition, the Commission has set the stage for possible interference problems, or that this will discourage commercial operators from undertaking transitions to the new band plan. Many licensees will take good advantage of this new flexibility before their transition. Our experience with our temporary fixed licenses, operating within the same geographical area as our fixed stations without causing or being subject to interference reassures us that if licensees are careful about their neighbors, interference problems can be solved before they even occur. In much the same spirit of cooperation, GMUIF also does not agree with the CTN and NIA request that The Commission add a desired to undesired (D/U) ratio interference protection requirement for new or modified fixed transmitters in the Mid Band Segment after transition, in order to protect EBS receive sites from co-channel and adjacent channel interference. This is simply not necessary with modern equipment and will provide little more than additional paperwork burdens for the Commission and EBS licensees.

Replacement Downconverters

GMUIF agrees with CTN and NIA that The Commission should require transition proponents to supply new downconverters to all receive sites of EBS stations located within the stations' old 35 mile protected service areas. Even though receive sites located outside of the new GSAs won't be entitled to interference protection under the geographic licensing approach, most if not all receive sites that were formerly protected will continue to be used, and will be able to successfully receive signals if they are provided downconverters that filter out all but the MBS band signals. Put another way, new downconverters at these locations may actually result in less interference.

Transition Safe Harbors

On the other hand, GMUIF strongly concurs with CTN and NIA that two additional safe harbors should be adopted to assist commercial operators and EBS licensees in determining how certain common situations may reasonably be handled in proponents' transitions plans. One such safe harbor addresses how an EBS licensee may be treated if it is currently offering more than one video programming service. The other addresses situations in which more than one licensee shares a channel group in a particular location. These arrangements were the subject of negotiation and agreement between the commercial and educational communities, and their adoption will facilitate transition planning.

Secondary Markets

Similarly, GMUIF urges the Commission to clean up several outstanding issues in connection with its application of the new secondary markets leasing rules to EBS excess capacity leasing. The rules should clearly articulate the existing substantive leasing requirements for EBS, which the FCC intended to carry over into the secondary market regime. In addition, the Commission needs to acknowledge that, in the case of *de facto* transfer leases, EBS licensees

may not want, and should not be required, to retain responsibility for compliance with rules regarding construction and operation of facilities by lessees, and EBS licensees will not need to require that all station modifications applications and other communications with the Commission be submitted by the EBS licensee, rather than the lessee.

Four Channel Rule

GMUIF also urges the Commission to eliminate the old Four Channel Rule, in order to permit EBS licensees additional flexibility in transitions, to enable multiple educators to work together under the banner of a particular licensee, and to permit existing licensees with more than four channels the ability to seek to expand their service areas into the “white areas.”

Commercial Licenses on EBS Spectrum

There is no further purpose to be served by the old rule provisions that allowed, in certain rare cases, commercial entities operating “wireless cable” systems to be licensed on up to eight EBS channels in certain circumstances. GMUIF does not propose changing the status of any existing commercial licensee under the old rule, and existing licenses should be grandfathered, but the wireless cable exception serves no legitimate purpose going forward, and should not be used as a tool to permit commercial entities to bid against educators in any EBS white space auction.

Grandfathered E and F Group EBS Stations

Several of the EBS Parties referred to in our opening paragraph above hold licenses for grandfathered E and F group stations.² GMUIF strongly believes that these stations should be

² Anaheim City School District operates EBS station KVP-26 on the F group at Modjeska Peak, California. California State University is licensee of station WGH-268 on the E group at Mt. Wilson and WNC-705 on the E group at Modjeska Peak, both in California. San Diego County Superintendent of Schools runs station WCX-487 on F1-F3 at Mt. Whitney, California, and the

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considered like any other EBS and/or BRS stations in developing exclusive geographic service areas (i.e., they should obtain GSAs composed of their 35 miles PSAs less one-half of any areas of overlap with co-channel EBS and BRS stations), and their restricted, grandfathered status should end. We thus strongly support the views of CTN and NIA on this subject, and vigorously oppose the self-serving position of NY3G, who apparently would sacrifice the sixteen EBS E and F group stations held by those EBS Parties as noted in the footnote below, as well as many other grandfathered E and F group EBS stations around the country.

Renewal Requirements

GMUIF also supports the position of CTN and NIA, and many other commenters, regarding performance requirements for license renewal of EBS stations, including deferral of performance benchmarks during the five-year following transition, in order to permit EBS stations to temporarily terminate service in connection with the transition from one band plan, and one service model, to another. In addition, the safe harbors set forth by CTN and NIA should be adopted, which would result in a finding of substantial service based on certain educational use parameters, and based on an EBS station being incorporated into a commercial system that itself is providing substantial service.

Auction Issues

EBS white space auctions should be conducted after the transition deadline, and should be limited to EBS eligible bidders. The auctions should be based on BTAs, with separate

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F4 channel at that same location is licensed to Palomar College (station WGR-707). South Carolina Educational Television Commission has eleven grandfathered E and F group stations in South Carolina (WHM-939 in Chester, WHN-702 in Seneca, WHN-703 in York, WHN-705 in Spartanburg, WHN-713 in Ridgeland, WHN-714 in Aynor, WHQ-259 in Columbia, WHQ-373

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auctions being conducted in each BTA for EBS channel group, with the UBS or LBS portions of the group being auctioned separately from the MBS portion of the group. GMUIF believes that there should be no “designated entity” bidding credits, which are not required by statute in these circumstances, and which make no sense applied to EBS eligible entities.

Conclusion

GMUIF supports most of the positions of CTN and NIA as set forth in their Joint Comments and their Petition for Reconsideration.

Respectfully submitted,

The George Mason University
Instructional Foundation, Inc.

By: Michael R Kelley, Ph.D.
President

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in Lexington, WHR-456 in Cottageville, WHR-471 in Sumter, and WHR-614 in Bennettsville, all South Carolina).